

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000664

FILED: _____

RANDALL ROBERT PAYTAS

ROBERT L BAUMANN

v.

STATE OF ARIZONA

RICHARD E SERDEN

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. ----

Charge: 1. DRIVING WHILE IMPAIRED
2. BAC .10 OR HIGHER WITHIN TWO HOURS OF DRIVING
3. IMPROPER RIGHT TURN
4. FAILURE TO DRIVE IN A SINGLE LANE

DOB: 06/08/55

DOC: 12/10/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A), and 13-4032.

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This matter has been under advisement without oral argument and this Court has considered and reviewed the record on appeal transmitted from the Scottsdale City Court, and the Memoranda submitted by counsel.

Appellee, Randall Robert Paytas, was accused of Driving While Intoxicated, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); and Driving with a Blood Alcohol Content of .10 or Higher within Two Hours of Driving, also a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); and two Civil Traffic offenses, all of which are alleged to have occurred on December 10, 2000 within the City of Scottsdale. Appellee filed a Motion to Suppress evidence allegedly illegally obtained from a blood draw performed shortly after his arrest. The trial court granted the Motion to Suppress in a signed order dated July 2, 2001. The record is not clear when that order was mailed to counsel. In a pleading dated July 9, 2001, counsel for Appellee states that as of July 9, 2001 the trial judge's written decision had not been issued. On August 17, 2001 the prosecutor filed a Motion to Dismiss the charges without prejudice and filed a Notice of Appeal in this case.

On appeal both counsel addressed the merits on the issue presented in the trial court's order of July 2, 2001 granting the Motion to Suppress. Appellee cites Litak v. Scott¹ for the proposition that the State cannot appeal an order granting its own motion to dismiss. Neither party has addressed the underlying issue of the timeliness of the State's Notice of Appeal.

Rule 4 of the Superior Court Rules of Appellate Procedure-Criminal provides time limits for appeals by a Defendant after entry of judgment and sentence. That rule requires that the Notice of Appeal be filed within ten (10) days of the entry of judgment and sentence. The rules specifically provides in subsection A:

¹ 138 Ariz. 599, 676 P.2d 631 (1984).
Docket Code 512

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The Notice of Appeal shall be filed with the trial court within ten (10) days after the entry of judgment and sentence, except that a Notice of Delayed Appeal shall be filed within ten (10) days after entry of an order granting a delayed appeal.

Since this rule clearly applies to Defendants who appeal, the question then becomes when must the State file its Notice of Appeal and within what period of time? Since no other time limits are provided by the Superior Court Rules of Appellate Procedure-Criminal or the Rules of Criminal Procedure, I conclude that the time limit for a State's appeal is ten (10) days, consistent with Rule 4, Superior Court Rules of Appellate Procedure-Criminal.

Turning to the next question of when the State must file its Notice of Appeal, Rule 4, Superior Court Rules of Appellate Procedure-Criminal, requires that the Notice of Appeal be filed within ten (10) days after entry of judgment and sentence. However, A.R.S. Section 13-4032 permits the State to appeal from orders (such as an order granting a new trial, granting a Motion to Suppress or dismissing an Indictment/Information/Complaint) which is not a final judgment. The term "judgment" is defined in Rule 26.1(a), Arizona Rules of Criminal Procedure as follows:

The term judgment means the adjudication of the court based upon the verdict of the jury, upon the plea of the Defendant, or upon its own finding following a non-jury trial, that the Defendant is guilty or not guilty.

This definition of "judgment" is restrictive and excludes orders granting a new trial, an order granting a Motion to Suppress, etc., as contemplated as among those orders which the State may appeal under A.R.S. Section 13-4032.

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Upon a closer examination of Rule 4, Superior Court Rules of Appellate Procedure-Criminal, it is clear that the ten-day time period within which to file an appeal is triggered by the entry of judgment. By analogy, the entry of an order granting a Motion to Suppress (such as is the case in this case) should be the trigger which begins the time for filing a Notice of Appeal.

It appears from the record that the State's Notice of Appeal which was dated August 17, 2001 was filed far after the ten-day period within which the State could have filed its Notice of Appeal. That ten-day period commenced July 2, 2001 with the entry of the order by the trial court granting a Motion to Suppress.

The untimely Notice of Appeal deprives this Court of jurisdiction to address the merits of the issues presented.²

THEREFORE, IT IS ORDERED denying all relief and remanding this matter back to the Scottsdale City Court for all future and further proceedings.

² State v. Dawson, 164 Ariz. 278, 792 P.2d 741 (1990).
Docket Code 512